



United States Department of the Interior

FISH AND WILDLIFE SERVICE

P.O. Box 1306 / Room 4102
Albuquerque, New Mexico 87103



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SEP 23, 2005

Memorandum

To: All DOI Agencies, Southwest Region

From: Acting Regional Director, Southwest Region s/ Larry G Bell

Subject: Environmental Compliance Associated with Hurricane Response and Clean-up Activities

Until further notice, the U.S. Fish and Wildlife Service (Service) will address all hurricane related Federal activities within counties of Presidentially-declared disaster areas following the approach below. Environmental compliance for areas outside of Presidentially-declared disaster areas is also addressed. The Section 7(p) of the Endangered Species Act (ESA) and the emergency consultation provisions of the regulations that implement the ESA (50 CFR section 402) will be used.

Section 7 Consultation Under the Endangered Species Act:

Within Presidentially Declared Disaster Areas, the Service's 1998 Section 7 Consultation Handbook defines an emergency as a situation involving an act of God, disasters, casualties, national defense or security emergencies and includes response activities that must be taken to prevent imminent loss of human life or property. Section 7(p) of the ESA states that within an area which has been declared by the President to be a major disaster area under the Disaster Relief Act of 1974, the President is authorized to make determinations required by subsections (g) and (h) of section 7 (i.e., Application for Exemption and Report to the Committee, and Exemption) for any project for the repair or replacement of any public facilities substantially as it existed prior to the disaster, and which the President determines (1) is necessary to prevent the recurrence of such a natural disaster and to reduce the potential loss of human life; and (2) to involve an emergency situation which does not allow the ordinary procedures of section 7 to be followed. We interpret section 7(p) of the ESA to mean that within the declared disaster area restoring any infrastructure damaged or lost due to the hurricane back into the original footprint does not require consultation with the Service. Pursuant to our emergency consultation procedures, under no circumstances will the Service obstruct an emergency response decision made by an agency where human life is at stake.

For storm related activities outside of Presidentially-declared disaster areas, Federal agencies should use the emergency consultation procedures covered in 50 CFR section 402 and in Chapter 8 of the Service's section 7 Consultation Handbook. These guidelines indicate that agencies should contact the Service by phone, the Service should offer recommendations verbally to minimize the effects of the emergency response action on listed species or their critical habitat, and the Service should follow up with written correspondence to the action agency documenting the conversation. The guidelines indicate clearly that the Service will not stand in the way of response efforts. After the emergency is under control, the action agency initiates formal consultation if listed species were adversely affected.

Compliance with the National Historic Preservation Act:

For your information and convenience, we are also including some information regarding compliance with the National Historic Preservation Act (NHPA). The regulations to follow for compliance with section 106 of the NHPA in a disaster declaration are found at 36 CFR 800.12. The following points should be considered in working with these regulations in a disaster situation:

Immediate rescue and salvage operations conducted to preserve life or property are exempt from the provision of section 106 (36 CFR 800.12 (b)(2)(d)).

The following emergency procedures apply within 30 days of the declaration of an emergency (36 CFR 800.12(b)(2)(d)):

Agency officials and staff should contact their Regional Office to coordinate with their agency Preservation Officers or cultural resources staff; your agency may have a formal agreement on how to handle emergency situations for compliance with section 106 of the NHPA, and can provide the specific advice you will need for your agency in this recovery effort.

If your agency does not have an existing agreement or its own cultural resources staff, and has no existing guidance on how to carry out section 106 compliance in an emergency situation, follow the procedures given in 36 CFR 800.12 (b)(1)(2). These regulations require the Federal official to request comment from the State Historic Preservation Officer (SHPO), and from the Indian Tribes that may have an interest in your project area. You may contact the State Historic Preservation Office in each state for questions about specific undertakings, or general advice on compliance in this situation; they are the office that works with Federal agencies on a routine basis to assure compliance with the NHPA, and are charged with assisting the public and Federal agencies in preserving historic and cultural resources.

We suggest that you contact the appropriate SHPO for your state.

Oklahoma: Charles Wallis, section 106, Historic Archaeologist, 405-521-6381

Texas: Larry Oaks, SHPO, 512-463-6100

If you cannot reach the SHPO contact in your state, or you have other questions, you may contact us at the number below and we will be happy to assist you in finding answers to your questions.

Regional Point of Contact for Questions:

To facilitate and streamline our service to other agencies during the response to Hurricane Rita, we have designated a Service regional point of contact for all inquiries related to ESA section 7 consultation, NHPA, and National Environmental Policy Act (NEPA) compliance questions. Allison Arnold or Dawn Whitehead of the Ecological Services Division will serve as this point of contact. They can be reached at 877-265-5887, or via e-mail at Allison_Arnold@fws.gov or Dawn_Whitehead@fws.gov.

If you have any questions about these issues, please contact the Assistant Regional Director, Ecological Services, at 505-248-6454.